Filed 12/15/16 C.M. v. Superior Court CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

C.M., Petitioner, v. THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, Respondent. LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B277966 (Los Angeles County Super. Ct. No. DK10604)

ORIGINAL PROCEEDING. Petition for extraordinary writ. (Cal. Rules of Court, rule 8.452.) Terry Truong, Juvenile Court Referee. Petition denied.

William D. Caldwell for Petitioner.

No appearance for Respondent.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Jessica S. Mitchell, Deputy County Counsel, for Real Party in Interest.

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Petitioner C.M. is the mother of almost-two-year-old G.P., a dependent of the juvenile court. Mother has filed a petition for extraordinary writ pursuant to rule 8.452 of the California Rules of Court challenging the juvenile court's September 21, 2016 order terminating her reunification services and setting a hearing under Welfare and Institutions Code section 366.26.[1] We conclude there is substantial evidence supporting the juvenile court's decision that G.P. could not be returned to mother's custody, that mother was provided with reasonable services, and that the court did not err in calculating the statutory period within which it could extend reunification services. We therefore deny mother's petition.

Father's counsel filed a *Glen C.*[2] letter, indicating he would not be filing a writ petition, and requesting more time for father J.P. to file a petition in propria persona. We granted the extension of time. Father has not filed a petition. Therefore, we do not discuss the facts concerning reunification services provided to father or the court's findings of detriment to G.P. if he were to be returned to father's custody. We also granted mother's request to file a reply to the Department's answer.

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[1] All further statutory references are to the Welfare and Institutions Code.

[2] *Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570.

BACKGROUND

G.P. came to the attention of the Los Angeles County Department of Children and Family Services (Department) when he was three months old. Law enforcement responded to the home where G.P. lived with his parents and half sister. Father is disabled by mental illness. He was diagnosed with bipolar disorder as a child. He has also been diagnosed with posttraumatic stress disorder (PTSD). When the family came to the attention of the Department, father had been involuntarily hospitalized five times in California and spent five months in a mental institution. After his discharge from active duty in the United States Army following deployment in Iraq, father suffered from delusions, mania, aggression, seizures, and other symptoms of mental illness. Paternal grandfather had been father's conservator for several years, until recently, when mother began to be paid by the Veterans Administration to be his primary caretaker.

In March 2015, father was arrested for brandishing a knife and threatening police. During the encounter, mother approached father with G.P. in her arms, even though he was still brandishing the knife. This is how G.P. came to the attention of the Department. Father had previously lost custody of his daughter who was born in August 2010.

In May 2015, the court ordered G.P. detained in shelter care. Between then and the jurisdiction hearing in September 2015, mother was uncooperative with the Department. The court sustained allegations of father's mental illness and mother's denial of father's mental health problems and failure to protect G.P. The court ordered reunification services for both parents, including individual counseling, and both parents were granted

monitored visits, to be had separately, with discretion in the Department to liberalize the visits.

During the first six months of services, mother had regular monitored visits with G.P. and attended to him appropriately. Mother completed her parenting and mental illness support group classes and participated in individual counseling. The Department expressed concern, however, that mother lacked insight and continued to minimize father's lack of progress in his programs. Father had completed parenting classes but the instructor said he was uninterested and his homework was repeatedly returned to him to correct, such that the instructor believed father should repeat the program. Father's psychologist and his PTSD support group facilitator both said father continued to lack insight and made no progress in understanding the danger he presented to G.P. G.P. cried during visits with father, father was unable to soothe him, and he continued to put his finger in G.P.'s ears despite repeatedly being told not to do so.

At the six-month review hearing, despite the Department's recommendation to terminate reunification services, the court found the parents were in partial compliance and ordered six more months of reunification services. In the ensuing six months, the Department became aware that mother had anger management issues. Her therapist, as well as father's, reported that mother needed therapy to address her anger and "quick temper" but mother did not believe she needed to continue in therapy. A paternal aunt reported receiving text messages from mother full of profanity. The social worker reported that "[o]n multiple occasions," she had observed and been the target of mother's anger and inappropriate comments.

At the continued 12-month contested review hearing on September 21, 2016, G.P. was 20 months old. He was doing well in the care of his foster mother but she was not interested in providing a permanent home for G.P. Mother and father remained married and had been in couple's counseling to improve communication (to learn to handle conflict other than by raising their voices/fighting) and to adjust to father's disabilities. Mother was the legal caregiver for father and was receiving payment from the Veterans Administration to assist father with cooking, cleaning, taking him to his appointments, giving him his medication and showering him.

Nevertheless, the couple's counselor told the social worker that the parents had made arrangements for father to move out of the home. When the social worker asked mother about this shortly before the review hearing, mother said that was correct, but when the social worker asked for father's new address, mother said she would provide it later. (Mother did not provide the address until a month later, the day before the contested review hearing.) When the social worker asked why they decided father should move out, mother replied, "Ask my attorney," and walked away. Thirty minutes into father's allotted one-hour visit with G.P., mother impatiently began honking the car horn. When the social worker asked father how he felt about being honked at, he said, "It keeps things fresh, and she has other appointments she has to attend."

Two days before the contested review hearing, paternal aunt who resides in Ohio called the social worker to report that father had told an uncle in Ohio that although he and mother reported he had moved out, he actually continued to live with mother. Father also told this uncle that he continues to suffer

from seizures and as a result, he had to be hospitalized more than once. A letter from a Veterans Affairs doctor dated the same day as the contested review hearing stated that father "has strong support from his wife."

Mother and father testified at the contested review hearing. When mother was asked if she had learned in her various counseling and therapy sessions about any symptoms or telltale signs that something was not right with father, she responded, "no." Mother also testified that she was unable to ensure that father was stable on his medication.

Mother's responses were generally vague about why G.P. had been detained from her and how she would protect G.P. in the future if he were released to her. When she testified that "had I known [about father's temperament and bipolar disorder], things would have happened differently," the court responded that mother *had* known about father's bipolar disorder and his temperament before the dependency proceedings since she was living with him at the time.

When G.P.'s counsel asked mother what types of safeguards she would put in place in her daily life to ensure the child was safe and to prevent him from being alone with father, mother's response was vague: "Whatever is necessary." At that point, the juvenile court expressed concern about mother's lack of a specific safety plan for G.P. Only then did mother give an example that she would take a shower or use the bathroom only when the child was sleeping, would do whatever was needed to get done, and would take G.P. to a babysitter if she needed to be away from him.

When the juvenile court found that returning G.P. to mother would be detrimental to the child, it explained that

mother had not been truthful with the court, her answers at the contested hearing showed a "roundabout answer without really answering what I wanted," mother had not accepted any responsibility for her role in bringing G.P. into the dependency system, and mother only had one hour of unmonitored visits per week. The court found that mother would testify to the court, and tell her therapist and the social worker whatever she believed they wanted to hear.

DISCUSSION

Mother contends the juvenile court erred in terminating reunification services because (1) there is no substantial evidence to support the decision that G.P.'s return to mother's custody would create a risk of detriment to G.P., (2) there is no substantial evidence supporting the court's finding that the Department provided reasonable services, and (3) the court misconstrued the statutory time allowed to extend services. None of these claims has merit.

We review the juvenile court's determination that the return of the child to his parent would create a substantial risk of detriment for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.) "Substantial evidence" means such evidence as a reasonable mind might accept as adequate to support a conclusion. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) In reviewing the evidence, we must construe it in the light most favorable to the juvenile court's determination, resolve all conflicts in support of the court's determination, and indulge all inferences to uphold the court's order. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1020-1021; *In re Michael G.* (1993) 19 Cal.App.4th 1674, 1676; *In re Rocco M.*, at p. 820.)

The mere completion of the technical requirements of the reunification plan is not the sole consideration when deciding whether to return the child to the parent. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 704; *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1139-1140.) At the section 366.22 hearing, a trial judge may consider, among other things: "whether the natural parent maintains relationships with persons whose presence will be detrimental to the [child] . . . ; limited awareness by a parent of the emotional and physical needs of a child . . . ; failure of a minor to have lived with the natural parent for long periods of time . . . ; and the manner in which the parent has conducted himself or herself in relation to a minor in the past." (*Constance K.*, at pp. 704-705, citations omitted.)

We reject mother's assertion there is no substantial evidence the Department provided her reasonable services or to support the juvenile court's finding of detriment. As to reasonable services, at the contested 12-month review hearing, mother never raised the issue of reasonable services or objected to the juvenile court's finding that the Department provided reasonable services to her. Thus, mother has forfeited that issue. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293-1294, superseded by statute on other grounds as stated in *In re S.J.* (2008) 167 Cal.App.4th 953, 962; see also *In re Christina L.* (1992) 3 Cal.App.4th 404, 416.)

In any event, the record demonstrates that the Department provided mother with reasonable services. Throughout the dependency proceedings, the social worker made sure that mother was receiving the court-ordered visits with G.P. and was attending her programs. The social worker also monitored some

of mother's visits, met with mother to discuss the court-ordered programs and visits, and continued to keep in contact with mother throughout the reunification period to see how she was progressing in her programs. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598-599 [" 'The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.' "]; accord, *In re Alvin R.* (2003) 108 Cal.App.4th 962, 972; *In re Misako* (1991) 2 Cal.App.4th 538, 547.)

As to the juvenile court's finding of detriment, mother concedes in her petition that the court distrusted mother, and both her therapist and the social worker believed she needed more therapy to manage her anger. There is substantial evidence, described above, that mother had not progressed in her therapy or counseling to the point that she grasped the extent of the danger father posed to G.P. or that she had learned how to protect G.P. from the danger posed to him by father's severe mental illness.

Finally, there is no merit to mother's contention that the juvenile court misconstrued the statutory time allowed to provide reunification services. Mother contends she was entitled to services for 18 months after G.P. was removed from her custody, to March 2017. That is not correct.

When, as here, a child is under three years old at the time he is removed from a parent's custody, the parent is entitled to reunification services for a period of six months from the dispositional hearing but no longer than 12 months after the date the child entered foster care, unless the child is returned to the home of the parent. (§ 361.5, subd. (a)(1)(B).) The juvenile court could extend services up to 18 months after G.P. was removed

from mother's custody *only* if the court found there was a substantial probability that G.P. would be returned to her custody within that time or that reasonable services had not been provided. (§ 361.5, subd. (a)(3).) Mother does not contend that she asked the court to make those findings pursuant to section 361.5, subdivision (a)(3). The record demonstrates she did not ask the court to make any such findings at the contested 12-month review hearing.

G.P. was only five months old when he was removed from mother's custody on May 26, 2015. Therefore, mother was not entitled to more than 12 months of reunification services. The dispositional hearing was held on September 1, 2015. Mother was not entitled to receive services after September 1, 2016, because G.P. had not been returned to her custody.

On September 21, 2016, the juvenile court terminated reunification services and set a permanency review hearing for January 19, 2017. Section 366.22 provides that within 18 months after a dependent child is originally removed from the physical custody of his or her parent, a permanency review hearing pursuant to section 366.26 must occur. At the hearing, "[t]he court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (§ 366.22, subd. (a).) Thus, section 366.22 required that the section 366.26 hearing would be held no later than November 26, 2016, 18 months after G.P. was originally removed from mother's custody. However, due to the continuances of hearings, the court set the section 366.26 hearing

20 months after G.P. was originally removed from mother's custody. There is no showing the juvenile court misunderstood the statutory requirements.

DISPOSITION

The petition is denied. This opinion is final forthwith as to this court pursuant to rule 8.490(b)(2)(A) of the California Rules of Court.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.